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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/399,873	09/20/1999	FRANK FADO	6169-95	2778

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EXAMINER

ARMSTRONG, ANGELA A

ART UNIT PAPER NUMBER

2654

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/399,873

Applicant(s)

FADO ET AL.

Examiner

Angela A. Armstrong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The Affidavits filed on August 12, 2002 under 37 CFR 1.131 have been considered but are ineffective to overcome the Lewis (US Patent No. 6,324,499) reference.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Lewis (US Patent No. 6,324,499) reference. The declaration and exhibit(s) must clearly explain which facts applicant is relying on to show completion of the invention prior to March 8, 1999.

Although the affidavit alleges to a reduction to practice prior to March 8, 1999, the evidence from the exhibit does not support the allegation to show that applicants had possession of the whole invention as claimed in limitations of claims 1-12, prior to the effective date of the Lewis reference (March 8, 1999). Applicant has submitted a copy of a disclosure summarizing the concept of the invention, but the submission does not provide facts of reduction to practice. See MPEP 715.02 and 715.07.

The Lewis (US Patent No. 6,324,499) reference is a U.S. patent or U.S. patent application publication of a pending or patented application that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings. If the reference and this application are commonly owned, the patent may be disqualified as prior art by an affidavit or declaration under 37 CFR 1.130. See MPEP § 718.

Terminal Disclaimer

2. The terminal disclaimer filed on August 12, 2002 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US Patent No. 6,324,499 has been reviewed and is accepted. The terminal disclaimer has been recorded.

3. In response to the Office Action mailed on May 8, 2002, applicant has amended claims 1 and 2, without adding new matter.

In consideration of the Terminal Disclaimer, the Double Patenting rejection has been overcome. In consideration of the amendment to claims 1 and 2, the 35 USC 112, second paragraph rejection has been overcome.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being obvious over Lewis et al (US Patent No. 6,324,499), herein after referred to as Lewis, in view of Kawada et al, JP41009184A, herein after referred to as Kawada.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37

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CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention “by another”; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Lewis discloses methods, a system and machine-readable storage for responding to noises in a speech recognition system.

Regarding claims 1 and 7, Lewis provides monitoring a system of a computer, a computer user and the environment, detecting background noises, environmental noises and computer noises which may occur while a person uses a voice recognition application program, identifying the noises that occur and performing an action or task in response to the identified noise of the system at col. 1, line 55 continuing to col. 2, line 36, which reads on “computer system” and “component” of the system. Lewis discloses identifying and recording of non-speech sounds at col. 4, lines 20-23 and lines 49-53, which reads on “recording a silence sample” and “recording an isolated noise sample while operating a computer system component in

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isolation from other computer system components”. Lewis also discloses determining when a randomly occurring noise selected from a group of noises has been received at col. 4, lines 24-25, which reads on “attributing said isolated noise sample to said isolated computer component”.

Lewis does not specifically teach comparing the sounds to a preset threshold in determining which randomly occurring noise has been received. In a similar field of endeavor, Kawada teaches comparing the power level of an input signal to a threshold value and determining if the signal is sound or silence if the power level exceeds or falls below a set threshold (section entitled Solution), which reads on “comparing signal characteristics of a silence sample with signal characteristics of said isolated noise sample” and “said signal characteristics of said silence sample differ by a preset threshold from said signal characteristics of said isolated sample”. Kawada teach that such a system is advantageous in preventing a sound detector from misjudging increased and sustained noise levels as desired sound signals (section entitled Problem to be Solved).

Therefore, it would have been obvious to one of ordinary skill at the time of the invention to modify the noise recognizer in the speech recognition system of Lewis to provide for distinguishing between sounds and silence using a comparison based on a threshold criteria, as taught by Kawada, for the purpose of preventing the speech recognition system from misjudging increased and sustained noise levels as desired sound signals, as suggested by Kawada.

Regarding claims 2 and 8, Lewis teaches everything as claimed in claim 1. Additionally, Lewis teaches identifying and recording of randomly occurring noises at col. 4, lines 20-23 and lines 49-53, which reads on “logging said signal characteristics of said silence sample and said isolated noise sample”. Lewis also discloses determining when a randomly occurring noise

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selected from a group of noises has been received at col. 4, lines 24-25, which reads on “reporting excess noise identified in said identifying step”. Lewis further discloses mapping or assigning a predefined action to be performed if a randomly occurring noise has been identified at col. 1, line 66 continuing to col. 2, line 8 and col.4, lines 59-62, which reads on “suggesting a remedy for said identified excess noise”.

Regarding claims 3-6 and 9-12, Lewis teaches everything as claimed in claim 1. Additionally, Lewis teaches that the noises to be detected are selected from the group consisting of keyboard noises, breathing noises and a telephone ringing at col. 5, lines 4-6, which reads on “creating a list of computer system components to be tested for excess noise”.

Lewis teaches identifying and recording of a group of randomly occurring noises at col. 5, lines 1-6; col. 4, lines 20-23, and col. 4, lines 49-53, which reads on “recording an isolated noise sample while operating a computer system component in said created list according said corresponding method”.

Lewis does not specifically teach a particular method for testing for excess noise. In a similar field of endeavor, Kawada teaches comparing the power level of an input signal to a threshold value and determining if the signal is sound or silence if the power level exceeds or falls below a set threshold (section entitled Solution), which reads on “comparing signal characteristics of a silence sample with signal characteristics of said isolated noise sample” and “said signal characteristics of said silence sample differ by a preset threshold from said signal characteristics of said isolated sample”. Kawada teach that such a system is advantageous in preventing a sound detector from misjudging increased and sustained noise levels as desired sound signals (section entitled Problem to be Solved).

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Therefore, it would have been obvious to one of ordinary skill at the time of the invention to modify the noise recognizer in the speech recognition system of Lewis to provide for a method for testing a component for excess noise, as taught by Kawada, for the purpose of preventing the speech recognition system from misjudging increased and sustained noise levels as desired sound signals, as suggested by Kawada.

Additionally, Lewis teaches mapping or assigning a predefined action to be performed if a randomly occurring noise has been identified at col. 1, line 66 continuing to col. 2, line 8 and col. 4, lines 59-62, which reads on “suggesting said corresponding remedy for said identified excess noise in each said computer system component in said created list”.

Response to Arguments

5. Applicant's arguments filed August 12, 2002 have been fully considered but they are not persuasive. (Refer to remarks regarding the submitted Affidavits)

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela A. Armstrong whose telephone number is 703-308-6258. The examiner can normally be reached on Monday-Thursday 7:30-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on (703) 305-4379. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.

Angela A. Armstrong
Examiner
Art Unit 2654

AAA
November 3, 2002

Marsha D. Banks-Harold
MARSHA D. BANKS-HAROLD
SUPERVISORY PATENT EXAMINER
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